91-35

Supreme Court, U.S.
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Case Number

IN THE SUPREME COURT OF THE UNITED STATES

FOR THE 1991 A.D. TERM

DON H. ECKEL
Petitioner, appellant

vs.

COMMISSIONER, INTERNAL REVENUE
Respondent, appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED ON APPEAL

1. Whether the appellant has lawfully been made liable for payment of tax(es) derived from some alleged, unknown and statutorily undefined revenue taxable activity and measured by alleged taxable income within an alleged taxable year.

2. Whether the appellant may lawfully be required to complete forms which by law have no applicability to himself, but go only to other persons or class of persons.

3. Whether the respondent may lawfully impose upon the appellant, contrary to the declared intent of Congress for the United States, expressed within the Paperwork Reduction Act of 1980, pains, penalties, punishment and sanctions as a result of challenging documents which appear on their face to be improper or illegal.

4. Whether the respondent, and respondent agency are required to obey the Laws, statutes, rules, regulations and orders enacted by the Congress for the United States to regulate their activities.

5. Whether the respondent, and respondent agency may be deemed to have competently and sufficiently trained their employees by publishing manuals, when no fulfillment of any requirements for teaching or testing for comprehension is accomplished.

PARTIES TO THE PROCEEDINGS

All parties to the proceedings are contained within the caption of the case within the Court.

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In The
SUPREME COURT OF THE UNITED STATES

October term 1990

DON H. ECKEL,
Appellant,

vs.

COMMISSIONER, INTERNAL REVENUE,
Appellee.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Appellant/petitioner, Don H. Eckel respectfully Motions and Petitions this Court, as a matter of right, and by Writ of Certiorari, that the Court review the judgments of the United States Tax Court and the United States Court of Appeals for the Tenth Circuit in this above entitled cause.

OPINIONS BELOW

Memorandum Finding of Fact and Opinion, filed April 2, 1990 and Decisior

of the United States Tax Court, dated May 8, 1990. A copy of the Opinion and Decision appear in the Appendix to this petition.

Order and Judgment of the United States Court of Appeals, Tenth Circuit entered February 7, 1991, and Order issued April 12, 1991, Denying petitioner's Motion for Rehearing. A copy of the Order and Judgment, and Order appear in the Appendix to this petition.

Appellant is uncertain whether such decisions shall be published.

No known exclusive Record for Review exists resulting from any administrative processes provided by the respondent that the appellant has been made aware of, nor to which the appellant has been permitted access. An administrative record has been established by the appellant; was submitted to and accepted as exhibits by the U.S. Tax Court.

JURISDICTION OF THE COURT IS INVOKED ON THE GROUNDS AS SET FORTH BELOW.

The jurisdiction of this Court is invoked under:

Supreme Court Rules, Part III-Jurisdiction on Writ of Certiorari, Rule 10.1.(a), (c).

By Order dated April 12, 1991, the United States Court of Appeals for the Tenth Circuit Denied appellant's timely motion for rehearing. This petition for certiorari was filed within 90 days of that date.

STATUTE INVOLVED

1. Appellant knows of no statutory authority for federal jurisdiction as to the appellant. Appellant has challenged, from the onset, and in all instances, the subject matter jurisdiction of the respondent, the U. S. Tax Court, and the United States Court of Appeals for the Tenth Circuit (hereinafter, Tenth

Circuit).

The issue of subject matter jurisdiction has never been knowingly waived and has been placed squarely before the respondent and before the courts.

Neither the respondent nor the respondent agency has shown any facts or statutory authority of the Congress for the United States, for any allegation that the appellant has engaged in a revenue taxable activity, from which he derived taxable income for any taxable year; and, by which the respondent and the federal court may derive jurisdiction.

2. Appellant relies upon the doctrine set forth by the court within Economy Plumbing & Heating Co., Inc. v. U.S., 470 F.2d 585 at 589, 590 and Catholic Conf. v. Abortion Rights Mobilization, _____ U.S. ____, 108 S.Ct

2268, 101 L.Ed.2d 69 (1988) (see Verbatim Quotations, hereinafter, VQ) that unless it may be shown that the appellant is a taxpayer, by law, and within the definition of the Internal Revenue Code, the federal court, the Internal Revenue Service, the U. S. Court of Appeals is without subject matter jurisdiction. The only court known to the appellant for determination and redress is the United States Supreme Court.

CONSTITUTIONAL PROVISIONS

(1) First Declaratory and Restrictive Clause (First Amendment) to the Constitution for the United States, as a matter of Right, for Redress of Grievances. (VQ)

(2) Article III of the Constitution for the United States, pursuant to U.S. v. Woodley, 82-1028 (U.S. Ct. of Appeals, Ninth Circuit, 1983). (VQ)

STATEMENT OF THE CASE

The Tenth Circuit held within their Order of February 7, 1991 that appellant's Motion for Reconsideration (Rehearing), setting forth specific points as challenges to subject matter jurisdiction, was untimely at footnote 1, page 2; stating that the Paperwork Reduction Act of 1980, 44 U.S.C., 3501 et. seq. presented before the U.S. Tax Court (hereinafter, USTC) was not a timely argument.

Appellant contends that the U.S.Court of Appeals has erred.

The appellant is charged criminally with allegations of fraud by the respondent within their claims of penalties and interest even though there are no formal charges, at this time. Nor have any of these claims been set forth supported by any facts upon which to base a cause of action.

Facts which state a claim have been absent; no opportunity has been allowed to challenge these allegations and this cause should not properly be before the Court resulting from lower court decisions.

Additionally, the decision of the U.S. Court of Appeals is in conflict with at least one other court of appeals.

In U.S. v. Hatch, 919 F.2d 1394 (9th Circ. 1990) the court held in an identical cause that::

"failure to charge an offense can be raised 'at any time during the pendency of the proceedings'..." (page 1398).

(See page 56 et. seq. also)

The, appellee, U.S. Tax Court and the U.S. Court of Appeals have failed to take Judicial Notice of all the law that governs in this instant cause and the presentments of law by the appellant; which are a requirement of law set forth at 44 USC 1507. Such presentments of law

were directly related to the issues before the court.

The factual basis advanced is that no statutory authority exists for the claims of the respondent; and that existing law supports and proves the averments of the appellant.

Appellant makes no challenge to the lawfulness or constitutionality of any law, statute, rule or regulation.

It is the misapplication, wrongful enforcement and failure of the appellee to bring those within his charge into obedience of the law that appellant brings into question before the court.

The Constitution for the United States defines the taxing powers of the Congress for the United States at Article 1, Sec. 8, cl. 1, and defines the territorial jurisdiction and Venue at clause 17. A clear distinction is made by the Constitution for the United States of

direct and capitation tax(es) by apportionment, and indirect taxes:

Article 1, sec. 2, Cl. 3, relates to direct taxes, and apportionment.

Article 1, sec. 8, Cl. 1, sets forth all duties, imposts and excises to be uniform throughout the United States.

Article 1, sec. 9, cl. 4, states No capitation or direct tax, unless in proportion to the census or enumeration.

Article 1, sec. 7, cl. 1: All bills for raising revenue shall originate in the House of Representatives.

Section 1(a),(b), (c), (d), Title 26, U.S.C., (hereinafter, sec. 1), Internal Revenue Code (hereinafter, IRC), subtitle A, imposes a tax on taxable income (defined, sec. 63, Title 26) occurring solely from revenue taxable activities within a taxable year (defined, sec. 441(a),(b)) upon certain classes of individuals.

However, nowhere within subtitle A, or at any other subtitle or section does the IRC impose a liability for the tax imposed on taxable income at Sec. 1.

For understanding and clarification it is necessary and imperative to resort to:

(i) The Code of Federal Regulations (hereinafter, CFR);

(ii) The Constitution for the United States, (Art. 6, Cl. 3, VQ)

(iii) Federal Register, 44 U.S.C. 1501 et. seq.;

(iv) The Paperwork Reduction Act 44 U.S.C. 3501-3520 (hereinafter, PRA);

(v) The Administrative Procedure Act (hereinafter, APA);

(vi) The Internal Revenue Code;

(vii) Public Laws enacted by Congress for the United States;

(viii) Agency rules and regulations, opinions, rules of procedure, statements of general course and methods,

descriptions of forms available and places where they may be obtained, instructions as to scope and content of all papers, reports, examinations, amendments, revisions of the above or to find information concerning (a) liability, if any, (b) distinctions between a citizen of the United States and a citizen of one of the several states of the American Union, (c) approved forms, (d) rules, regulations and procedures governing appellee's requirements of preparation and publication of documents, (e) protection afforded, (f)procedural and administrative rights, and etc.

Appellant filed what are referred to as "Fifth Amendment Returns" for the years 1980, 1981 and 1982, on Form 1040, U.S. Individual Income Tax Return (hereinafter, form 1040).

Individuals, holding themselves out to

be acting on behalf of the Internal Revenue Service (hereinafter, IRS) and to be enforcing the internal revenue laws sent several form letters to the appellant which on their parts alleged: (i) that such returns were unacceptable; (ii) gave notice of alleged legal requirements for filing Federal individual income tax return; (iii) that failure to comply subjected the appellant to possible sec. 7203 violation; (iv) that the tax laws do not violate the Fourth or Fifth Amendments; (v) exacted or attempted to exact Frivolous Return Penalty of $500 on or about 07/18/83, and of which appellant filed suit in the U.S. District Court for refund (Civ 83-2368-R) and (vi) that the required form to be used for compliance by the appellant was form 1040.

Subsequently certain individuals filed summons actions in the district court and

appellant's books, records, papers and effects were compelled by the United States District Court, Western District, Oklahoma, (hereinafter, USDC) Judge Luther B. Eubanks, under contempt of court and continuing incarceration (Civ. 83-3056-E).

Appellant filed an appeal in the United States Court of Appeals for the Tenth Circuit on or about February 16, 1984, demanding the return of his personal property (No. 84-1229). The Tenth Circuit dismissed his appeal as moot, on or about April 27, 1984.

During the course of these events appellant has sought by correspondence in over fifty (50) instances, from the respondent; other individuals and offices of every branch of government, assistance in determining his duties and obligations as well as his attendant freedoms and immunities.

This correspondence was filed with and accepted as exhibits without objection during the hearing by the U.S. Tax Court.

At every instance the appellee has either not responded or has maligned, castigated and impugned the integrity of the appellant.

Counsel for appellee within the Brief for the Appellee to the U. S. Court of Appeals, at page 3, states:

"Taxpayer subsequently provided the IRS with the requested records, including bank records."

Let the record reflect that the appellant has never given the appellee his books and records, even under incarceration. These books and records were placed with the court.

Appellant has not voluntarily submitted to the jurisdiction or venue of the federal courts even though he has been brought into the court under duress

and incarceration under contempt of court, and thereby compelled under threat of continuing incarceration to induce his spouse, to produce his books, records, papers and effects to the court.

Appellant, without pursuing the issue at length, would state that he feels only betrayal by a partial judiciary acting at all times without subject matter jurisdiction.

At no instance has the IRS responded to any demands for information sought under any law, rule or statute, whether by personal inquiry, demands made under Title 26, USC. Nor has the appellee been required or ordered to comply within any normally accepted rules of discovery and evidence by the court in dealing with these civil actions.

At no time prior to Tax Court has the appellant been provided opportunity by respondent to a hearing to examine

evidence or witnesses, cross examine those allegedly making a claim, under lawful subpoena, of the court, in the USDC, before Judge Luther B. Eubanks, and such fact is a matter of court record, by transcript nor given equal justice and protection before the law.

Failure of the appellee to provide forum for full procedural or administrative due process before an impartial trier of fact has required the appellant to place before the USTC his statements of status and liability by Affidavit by Oath and Affirmation.

It is the appellant's deepest conviction that individuals and their supervisors, as well as the respondent, and the respondent agency, have hindered, hidden and denied access to documents containing information, contrary to law, that would more fully provide evidence as to appellant's position.

On or about November 6, 1987, appellee, or someone purporting to act on behalf of the appellee, sent by regular mail (contrary to the law and requirements of sec. 6212(a), IRC) an alleged statutory notice of deficiency.

On or about February 2, 1988, appellant filed with the USTC a Petition using their form. (T.C. form 2 (Rev. Sept. 1982)).

Appellant did not admit, submit to or voluntarily accept the jurisdiction or venue of the USTC.

Appellant does admit unwisely and mistakenly petitioning the USTC due to an incomplete understanding of every nuance of adjective law. However he did seek to remove his petition from the USTC within 45 days relating the lack of a Cause of Action before the Court and of the Jurisdiction of the USTC.

Appellant does not waive any issue(s)

that are, have been or may be a part of the continuing tort action(s) by alleged representative of the respondent-appellee nor should it be deemed that he has abandoned any issue or position unless it is expressly so stated and stipulated.

Appellant's position is that he is a nontaxpayer pursuant to the internal revenue laws, and even though he may ultimately pay a tax, he is not the "taxpayer" described by law until he has been identified as having engaged in a revenue taxable activity clearly defined within the Internal Revenue Code, and designated as a person or class of persons made liable for the collection, remittance, payment or return of the tax.

REASONS FOR PLENARY CONSIDERATION BY THIS COURT.

(1). Questions raised by the appellant are not known to have been decided previously by this Court.

(2). Questions raised by the appellant of the basic nature of the tax imposed on taxable income at Sec. 1, and the improper application and unlawful enforcement occurring from lack of subject matter jurisdiction require consideration by this Court.

(3) Ruling of the lower courts indicate an unawareness of the intent of Congress, the rulings of this Court; and an unwillingness to obey this Court by decisions in conflict with the decisions of this Court, and to hold the respondent to the requirements of the law.

SUMMARY OF ARGUMENT

Congress for the United States has never been granted plenary power by the Constitution for the United States to tax the inhabitants of the several states of the American Union in any manner or for any continuing period of time it elects.

Should such contentions be true that Congress has been granted such power it would have been accomplished by the first congressional session immediately after constitutional ratification, there would have been one challenge before this Court, one decision and there would be no further questions as to the form of government instituted.

Proof of this premise is that Congress has enacted, in part, a tax by statute, that has been declared unconstitutional by the decision of this Court in Pollock v. Farmers Loan & Trust, Co., 157 U.S. 429 (1895); 158 U.S. 601 (1895). G. M. Leasing Corp. v. U.S. 429 U.S. 339 (1977)

It is not argued that Congress has enacted an unlawful or unconstitutional internal revenue tax in this cause before the court. On the contrary, appellant argues that the law: supports every internal revenue tax; upbraids those who

would challenge the internal revenue law as unlawful; and prays that there should never be any modifications or expansions.

This Court has ruled consistently, time after time, that the income tax laws enacted by congress are constitutional and wholly lawful. (Congressional Research Service, page 4 hereinafter, CRS, VQ at 16b)

In 1916, the Supreme Court examined the new income tax in light of the Sixteenth Amendment to the Constitution and the other constitutional provisions and found it was constitutional in its entirety. (VQ, CRS, at Page 16b).

The appellant agrees.

This Court, though governed by rules of narrowly and strictly defining questions before it, and by its own peculiar logic, has gone to extreme lengths, without pleading the cause of the litigants, to give understanding of the nature and

operation of the internal revenue laws.

The problem is and has been that the average American citizen does not have the interests to be willing to study and make himself aware of legalities, including those which go to rights, freedoms, immunities as well as to duties and obligations.

Those who would be proponents of the law by presuming to impose duties and specific performance twist and wrest the law to their own advancement and interests. Those proponents, in most if not all cases, would not recognize the law should they stumble upon it.

The average person understands the law: that is, the law, Common to all.

It seems unreasonable that the average person should be required to know intrinsically the IRC any more than he should study and be aware of the laws governing the Postal Service, Railroads,

the Law of Nations, or patents.

Liability, for the average citizen of one of the several states of the American Union, should be simply, precisely and clearly stated and easily found and determined.

These rules, regulations, procedures, statutes are put in place to protect the citizens of the several states of the American Union and the average individual from subtle and devious encroachments and not to expedite and facilitate the requirements of application and enforcement should they be taxpayers.

When an agency claiming jurisdiction is held to the strict letter of such authority as governs their activities towards the public at large there are few ways that they may be held to be in violation of any individual's rights of life, liberty and property, even should they be taxpayers as defined by the

Internal Revenue Code.

No known way is acknowledged to exist to avoid individual's rights being violated by circumvention and abuse of those regulations, by an agency.

Individuals acting on their own vol.tion without directive outside those statutes, rules and regulations act to their own interests and advancement; and must stand to answer on their own responsibility.

1. OPINIONS OF THIS COURT.

This Court has ruled consistently that the "income tax" laws are constitutional.

It is the application and enforcement that may bring into view certain violations of rights inherent and secured by Constitutional provisions.

Appellant is unable to find any disparity, disagreement of conflict within his understanding of the internal revenue laws of the United States and any

decision made by this Court.

This Court and the lower courts deal with "taxpayers" as defined within the Internal Revenue Code. Those entities which have engaged in a revenue taxable activity, receive revenue taxable income within a revenue taxable year appear to be rightful objects and subjects of the statutory authority of the Congress for the United States.

The lower courts, and this Court may make and have made such rulings because no liability is attached to specific individuals as persons or class of persons, of the public at large. These rulings are consistent and harmonious with the tax laws of the United States.

Placement of such liability by means of a liability clause, however, would make the tax imposed upon "taxable income" at Section 1, Title 26, IRC a tax other than an indirect tax and

therefore subject to constitutional challenge equal to or greater than that of Pollock.

It is argued that one engaged in a revenue taxable activity from which he derives taxable income within a taxable year has severely limited constitutional arguments available within the regulation and the taxation of that activity.

However, being liable for tax(es) imposed on one engaged in a revenue taxable activity such as the manufacture of tobacco or tires, the sale of arms to foreign countries, should not impose automatically like liability on the individual for all other activity.

This Court has also looked at the fallacies of most challenges to the tax imposed on taxable income at sec. 1, as well as the continuing barrage of gobbledy-gook that counsel for the appellee continues to spread before the

USTC, USDC and this Court to support their cause.

At first glance each and every hackneyed and worn out phrase seems to make sense, and indeed it does, if in fact, counsel for the appellee can "Put the Finger of the Appellant on the Law" that makes him liable for any tax placed on taxable income at sec. 1, or for taxable income derived from any other revenue taxable activity within a revenue taxable year; is able to show that the taxes owed are by liability of law; does not seek to make the appellant pay taxes or obligations that are owed by another other than himself.

2. EQUAL PROTECTION OF THE LAWS IN TAX CASES.

At page 10 CRS:
"The Supreme Court has determined that this assurance also precludes the United States from denying persons equal protection of the laws."
(cites omitted)

In Cross v. United States, 512 F.2d

1212, 1217 at (Fourth Circuit, 1975), the court, in a decision regarding privileges as opposed to rights, held:

".. .FULL PROCEDURAL DUE PROCESS IS NOT PROVIDED AT THE ADMINISTRATIVE LEVELS...

The problem that the appellant faced was he recognized that absent subject matter jurisdiction (statutory enactment placing liability for the tax imposed upon taxable income) he actually had no standing to have brought this cause before the United States Tax Court.

However, the appellant recognizes the court's power to enforce its will absent jurisdiction having been cast into the king's dungeon and informed that he would stay there until he complied with the order of the court.

Had the wife of the appellant not been terrified for the appellant, and against his will and over his objections submitted such records, papers and

effects as demanded, he might still be incarcerated. The United States District Court, Judge Luther B. Eubanks, betrayed the appellant and gave his records to his adversary who kept them for three (3) years and four (4) months.

No appeal to the logic or law of the United States to the United States District Court or to the United States Court of Appeals, Tenth Circuit could correct this act of injustice and violation of the rights of the appellant.

Appellant has defended himself in the USDC and before the USTC because he knew of no other relief available or authority that he might seek for assistance; except, eventually to this High Court which, throughout all political attacks through the years, has rendered true and honest judgements.

The appellant is aware that he may not rely on the determinations of the lower

courts in conducting the affairs of his life, and is of the understanding and belief that they have no binding powers except by the consent of the actors in cases exclusive of subject matter jurisdiction. (See: State v. Striggles, (VQ).

At the Federal level no lower court may lawfully rule in any cause before it absent subject matter jurisdiction nor a cause come before it on purely constitutional questions. Mason v. Hitchcock, 108 F.2d 134, 135, Peters, District Judge. (VQ)

Appellant would contend that the authority of the district courts go only to enforcement of the IRC, and no provision is made within the IRC for justice, mercy, equal protection of the law or equity. (See: 26 USC 7402, VQ)

Appellant contends that, for the most part, he knows and is able to apply, more

knowledge of the internal revenue laws than most USDC judges; and to his best knowledge and belief the USDC has acted and continues to act without jurisdiction on the "because I say so" of the appellee. Appellant enters his continuing objection.

ARGUMENT

1. THE IDENTIFICATION AND NATURE OF THE TAX IMPOSED AT SECTION 1. IRC.

Congress makes clear its intent and the type of tax imposed at Sec. 1, within the pages of the Congressional Record-House, Vol. 89, Part 2, 78th Congress, 1st Session, March 27, 1943, pages 2578-2581 (VO); At page 2579, 3rd Column, 1st para;

"In its early stages it was definitely an excise tax or a duty and so construed by the courts."...

"I. THE INCOME TAX IS AN EXCISE TAX, AND INCOME IS MERELY THE BASIS FOR DETERMINING ITS AMOUNT..."(emphasis added)

Within the CRS, Mr. Zaritsky agrees

completely with this statement and at page 4, certain specific examples are given, i.e., tax on certain sales and exchanges of property, estate taxes, tax on manufactured tobacco, and tax on corporate franchise.

The Court has noted that the inherent character of an income tax was that of an indirect tax at Brushaber v. Union Pacific Railroad Co., 240 U.S. 1, pages 16, 17, 18 (1916) (VQ).

Mr. Chief Justice White stated within Stanton v. Baltic Mining Co., 240 U.S. 103, at 112 (1916)

"...the Sixteenth Amendment conferred no new power of taxation" (emphasis added)

Flint v. Stone Tracy Co., 220 U.S. 107, (1916)

"....the right to tax a legitimate subject of taxation as an exercise of a franchise or privilege,..."

The decisions of this court are clearly stated. Armed with the language of the Court even a third grade public

school student is able to understand that the tax, imposed at sec. 1, is an indirect tax, generally in the nature of an excise tax and as such is subject to the rules of uniformity.

Tyler v. U.S., 281 US 497, 502. (3rd & 4th Circuits) (1930).
"A tax laid upon the happening of a event, as distinguished from its tangible fruits, is an indirect tax..." (VQ)

"The individual, unlike the corporation cannot be taxed for the mere privilege of existing. The corporation is an artificial entity which owes its existence and charter powers to the state; but the individuals' rights to live and own property are natural rights for the enjoyment of which an excise can not be imposed". (emphasis added)
Redfield v. Fisher, 292 P. 813, 819 1930)

"The liberty mentioned...means...the right...to be free in the enjoyment of all his faculties,...to use them in lawful ways...to carry out to a successful conclusion the purposes above mentioned.."
Allgeyer v. Louisiana, 165 U.S. 578, 589. (1897) (VQ)

"It has been well said that, 'the property which every man has is his own labor, as it is the original foundation of all other property..."
Butchers' Union Co. v. Crescent City,

111 U.S. 746, 757

Clearly, where none of the requisites are present, a person does not become a taxpayer, by merely presuming such fact

"...persons who are not taxpayers are not within the system and can obtain no benefit by following the procedures prescribed for taxpayers." Economy Plumbing & Heating Co., Inc. v. U.S., 470 F.2d 585 at 589, 590.

Our present system of taxation has ceased being "...a mode of raising revenues..." and has become "...plunder, transferring money from the owners of it into the possession of those who have no title in it..." Cooley's Constitutional Limitations, Vol. II, page 1034. (VQ).

An Essay on Trial By Jury, Lysander Spooner, John P. Jewett, Boston, 1852, Appendix page 222, "Taxation" (VQ)

"...If the government can take a man's money without his consent, there is no limit to the additional tyranny it may practise upon him;..."

2. IMPOSITION OF TAX, TAXABLE ACTIVITIES AND LIABILITY.

The single requisite necessary to silence the appellant, stated from the onset; before the respondent, the USDC, the USTC and Tenth Circuit and repeated before this honorable Court is to show him the law whereby he has been made a taxpayer, by law, and made liable for any internal revenue tax.

That there is a tax imposed on "taxable income" has never been disputed. The problem lies in determining what entity, person or class of persons has been made liable for the collection, remittance, return, or payment of the tax.

The fact that the appellant as a person may ultimately pay a tax does not mean that he is the person liable for the tax, or for the return of the tax.

Placement of liability occurs only three (3) times within the first three (3) subtitles of the IRC at secs. 1461

(withholding agents), 2002 (estate taxes) and 3403 (employers, as defined by the IRC). None apply to the appellant.

3. PERSON OR CLASS OF PERSONS UPON WHOM TAX IS IMPOSED AND CLAUSES AFFIXING LIABILITY.

Subtitles D and E, IRC, set forth many revenue taxable activities, and affix the entities or persons liable for the tax, e.g.

Tax Imposed Sec. 1	Liability Imposed Sec. (---)
4071(a)	4071(b)
4371	4374
4495	4611
4461	4662
4681	4682
4941	4941

and etc.

No one may, by application of reason and logic, contend that the absence of a liability clause at sec. 1, is merely an oversight.

No one may reasonably construe that those who write the internal revenue laws are without expertise, ability or

knowledge as to how to write a liability clause.

Even if it might be argued as an oversight from the first instance there has been seventy five (75) years for the error to be corrected.

Appellant is a self supporting typesetter, and does not derive, nor expect to derive any benefits from government as a result of his labors.

No where within the law is the self supporting activity of the petitioner named or listed as a revenue taxable activity, nor within the IRC, and no known statute exists to support any contention to the contrary.

Neither does the appellee have the authority where "...the tax assessment is an illegal exaction in the guise of a tax..." nor is he vested with "...absolute power of assessment..." "without opportunity for judicial review

of this status... before the status is bestowed upon..." (upon him) Botta v. Scanlon, 288 F.2d 504 (2nd Cir. 1961)

Higley v. Commissioner of Internal Revenue, 69 F.2d 160, at 162, 163, (Eight Circuit, 1934)

"In such a situation the beneficiary is entitled to a favorable construction because liability for taxation must clearly appear."

4. WHO OR WHAT IS A TAXPAYER AS DEFINED BY LAW?

The term "taxpayer" is defined in the IRC:

Sec. 7701(a)(14), "The term 'taxpayer' means any person subject to any internal revenue tax".

The definition contemplates that the persons "subject to" the tax is the taxpayer, and not necessarily one who may ultimately pay the excise tax due.

Counsel for the appellee (hereinafter, counsel) within his Brief for the Appellee to the Tenth Circuit (hereinafter, appellee's Brief) noted on page 8:

"The Tax Court's determination that taxpayer failed to meet his burden of proving that he was not liable for the deficiencies and additions to tax..."

The problem that the appellant has had is how to have both sides of the question considered by the lower court.

While it might be conceded that the arguments of counsel are correct, it might also be pointed out that counsel has an absolutely impossible task should he ever be required to prove the appellant is a taxpayer, having revenue taxable income for a taxable year by definition of law enacted by the Congress for the United States, or within the IRC.

There are no provisions in the IRC requiring such specific performance for appellee to so do, and the lower courts therefore have no jurisdiction to impose such requirements.

While such an arrangement may be convenient, it most certainly is not

equitable, nor should it be considered moral or ethical.

The only positive that the appellee has going for him is the willingness of the lower courts to ignore Rules of Evidence as to counsel for appellee.

WHETHER THE APPELLANT MAY LAWFULLY BE REQUIRED TO COMPLETE FORMS WHICH BY LAW HAVE NO APPLICABILITY TO HIMSELF, BUT GO TO OTHER PERSONS OR CLASS OF PERSONS.

Appellant carefully and clearly offered proof to the USTC within his Petitioner's Motion to Revise Computations and Vacate Memorandum Findings of Fact and Opinion (hereinafter Motion to Vacate), makes that document a part of this Brief of the Appellant as if restated in its entirety herein; that the respondent/respondent agency:

(a) was without statutory authority to issue a notice of deficiency to the appellant/petitioner because he cannot be identified within the IRC as a taxpayer;

(b) apparently lacked OMB approval for use of Form 1040 for an alleged reporting requirements or compliance with sec. 1 by the appellant; and

(c) had, in fact only sought and received approval on the face of the original application, for use by a different person or class of persons than named at sec. 1, i.e.,

"Individuals (Including self employed) who live abroad and have earned income from souces outside the United States"

(See microfische of original application of the appellee for approval of form 1040 to the Office of Management and Budget, (hereinafter, OMB) Control Number 1545-0074 submitted as exhibit to the tax court and to the Tenth Circuit);

(d) had upon the original application to the OMB (a copy of which was submitted to the USTC and is made a part of this appeal as if reproduced in its entirety) sought and did not obtain requested

approval in 1981 of form 1040 at 26 USC 1, and 26 CFR 1.1-1 (at 26 CFR 602.101).

(e) sought no authority or approval for Form 1040 within the renewal application of 09/29/89, at 26 USC 1, or at 26 CFR 1.1-1 (at 26 CFR 602.101); and

(f) had obtained authority and approval by the OMB for reporting at sec. 1, for any person or class of person, by use of form 2555, Foreign Earned Income (26 CFR (4-1-89 Edition) sec. 602.101, at 1.1.-1, OMB Control Number 1545-0067);

(g) had set forth no existing law or authority showing any requirement for the appellant, as a person or class of persons, to utilize form 1040 for compliance with sec. 1; and

(h) was guilty of subornation of perjury by continuing inducement, threat, intimidation and coercion to cause the appellant to complete and file a form 1040, knowing, as proponents, that it is

impossible to complete form 1040 without committing a felonious act of uttering false documents.

Appellant contends that the information contained within his Motion to Vacate to the USTC, Brief for the Appellant, Reply Brief and Motion for Reconsideration (Rehearing) to the Tenth Circuit amply explain the issues stated at this section and appellant would ask this Court to require the lower courts forward these documents and all motions, briefs and other documents submitted to the USTC to this Court should they not be included, for any reason, as part of the certified record to this Court.

WHETHER THE RESPONDENT MAY LAWFULLY IMPOSE UPON THE APPELLANT PAINS, PENALTIES, PUNISHMENTS AND SANCTIONS AS A RESULT OF CHALLENGING DOCUMENTS WHICH APPEAR ON THEIR FACE TO BE IMPROPER OR ILLEGAL, CONTRARY TO THE DECLARED INTENT OF CONGRESS FOR THE UNITED STATES EXPRESSED WITHIN THE PAPERWORK REDUCTION ACT?

Title 44 USC 3512 provides a Public

Protection clause. Said clause is qualified and restricted by section 3518, 44 USC. Appellant contends that these exceptions apply only to active cases within an administrative court, or in any district court wherein there is an active cause of action being litigated.

Within the court process Discovery is available in civil process, immunity is provided from disclosure in criminal process. Prior to such causes in the court, absent qualification that the appellant is in fact, by law, a taxpayer as a result of engaging in a revenue taxable activity, under regulations and other requirements, including the keeping of books, records and papers, the appellant has the protection of the Fourth and Fifth Amendments.

Neither the Public Protection Clause nor the attendant regulation published as 5 CFR Ch. III (1-1-91 Edition) at Sec

1320.4 and 1320.5 appear, on the face, to require the individual challenging the validity of an information collection request, information request requirement to bear the burden of proof of compliance.

Appellant challenged the validity of form 1040 within his Motion to Vacate to the USTC, restated to the Tenth Circuit within the Brief for the appellant.

On page one of Exhibit B, attached to the Brief for the Appellant to the Tenth Circuit (which was an exhibit to the USTC) it was pointed out that the respondent agency had not been authorized to omit an expiration date. Should the respondent argue that the large, bold letters appearing on the upper right corner is the expiration date it should be noted that its usage does not come within the year issued, for usage by the public at large. It should also be noted

that on other forms the IRS follows the standard size and appearance found on other documents in compliance with the requirements of the OMB.

WHETHER THE RESPONDENT AND RESPONDENT AGENCY ARE REQUIRED TO OBEY THE LAWS, RULES, STATUTES, REGULATIONS AND ORDERS ENACTED BY THE CONGRESS FOR THE UNITED STATES TO REGULATE THEIR ACTIVITIES?

Those who work for the appellee know of the lawlessness of respondent agency.

Agents are not at all wary of stating their obvious contempt for the restrictions placed upon them, decisions of courts of other circuits, or for the rights of the public at large.

Proof of this view are recent statutes enacted by Congress providing additional protections to the public at large.

As noted, supra, the restrictions placed upon agencies is not to expedite, to facilitate, or to make their jobs easier or enjoyable. These restrictions are enacted, and intended to be complied

with in order to protect their employer, the United States, from liability and suits alleging action in negligence and violation of rights, or privileges.

Appellee is required by law (if it may be held that the appellee is subject to any law) to provide certain places, times and opportunity for full procedural and administrative due process in its intercourse with those who fall within the requirements of the law.

Appellant is unaware if there has ever been an administrative hearing for one who sells tires, tobacco, boats, arms, under the requirements of the APA.

The problem that the appellant has is that there are no provisions for even a conference should he not be, by law, a taxpayer.

The Court's attention is directed to 26 CFR Ch. 1 (4-1-90 Edition), subpart E, Conferences and Practice Requirements,

sec. 601.502(a):

"Conferences, of course, may be accorded only to taxpayers or their duly authorized representatives".

The reason becomes apparent why he has never been provided an opportunity to establish his status, or to have provided to him any form to state his non liability.

It shall be easily proven that the appellee lacks jurisdiction: in personam, in rem or subject matter, within the IRC or by statutory enactments of Congress for the United States; should he be held, from the onset, to the basic rules of evidence apart from presumption.

The misapplication, wrongful and unlawful enforcement upon the appellant for decades by the appellee would be exposed; injustices would be brought to the attention of the public and large and into the light of truth; appellee would be liable for wrongful imprisonment of

appellant and of unknown numbers of individuals as political prisoners.

It becomes apparent to the appellant why no person within any agency or office of the Executive, Legislative or Judicial branches of government dared to respond to appellants inquiries. (page 13, supra).

In every instance, if response was received at all, all actors maligned, castigated and impugned the integrity of the appellant.

Appellant does not believe that this Court, absent a clear and identifiable statutory enactment should determine that the appellant is a "taxpayer" without substantive proof of revenue taxable activity/event for the following reason:

> Stanard v. Olesen, 74 S.Ct 768, 771, 347 U.S.___, (1954)
>
> "[3-5] For if an illicit business can continue while the administrative hearings are under way, those who operate on a fly-by-night basis may be able to

stay one jump ahead of the law. Yet it is for Congress, not the courts, to write the law."

WHETHER THE RESPONDENT, AND RESPONDENT AGENCY MAY BE DEEMED TO HAVE COMPETENTLY AND SUFFICIENTLY TRAINED THEIR EMPLOYEES BY PUBLISHING MANUALS, WHEN NO FULFILLMENT OR ANY REQUIREMENT FOR TEACHING OR TESTING FOR COMPREHENSION IS ACCOMPLISHED.

1. It seems ridiculous to state the obvious. However, this Court should have no problem believing that the appellant has been denied any form of procedural or administrative due process within the agency of the appellee. Therefore, there has been no opportunity for review, or appeal, no opportunity to present any facts or evidence, to challenge evidence, or to cross examine, or to refute any claims of the appellee before any of the lower courts.

Should such restraint upon appellant denying presentation of facts be construed as being equal protection and

equal justice, due process, procedural process or any form of any ability to exercise any right, freedom or immunity guaranteed protected and secured by the Constitution for the United States, then the tired, redundant, mundane and shopworn phrases as appellation to the appellant as a "taxpayer" and possibly a "tax protester" have merit. Also we might believe porches swing, and elephants fly.

It would be a continuing exercise in futility and folly, should the appellee contend otherwise, to be asked to bring forth any fact or law known to him to be of record to refute the contentions of the appellant.

Appellee, through those purporting to act in his behalf, in any intercourse with the public at large openly, honestly and continuously declare:

(a) they are not required to know the Code;

(b) They are not required to know the Law;

(c) They are not required to explain or prove the source of their authority;

(d) They just "collect taxes".

(e) They don't want to argue the law.

(f) They are not required to assist someone in determining their correct tax liability.

Should appellant ever be given the opportunity to subpoena witnesses, to have discovery, he would be able to prove these allegations of mind set due to lack of proper training stated above.

Appellant would contend that they have little, if any knowledge of the obligation to the public which they willfully oppress, confiscate property with intervention of the judiciary, and by terror and intimidation exact from the public at large money not owed, or in excess of any amount that may be owed,

and they are allowed to do so with impunity by the lower courts.

While these contentions of the agents for the appellee may be honestly held they do go contrary to published manuals, and to the charge of negligence as to the appellee as to the training of his agents.

Appellant will not try the patience of the Court with endless citations, but that he should not be considered remiss by stating a charge and then failing to offer proof the court's attention is directed to MT 9900-26 (1-29-75) IR Manual, page 5041.1, section 221. (appears in the Verbatim Quotations as a reference)

It is within the ruling in Cuneo v. Schlesinger, 484 F.2d 1086, 1091. (D.C. Court of Appeals, 1973) (VQ) where we learn at footnote 13 that the appellee may withhold information and operate

under unknown law and procedures.

Counsel for appellee informs the Tenth Circuit in appellee's Brief:

at page 5:

"On May 8, 1989, the case was tried before the Tax Court, (Doc. 22) Taxpayer did not offer any evidence to contest the Commissioner's deficiency determinations. (Ibid: Doc 29 at 4-5) When asked by the court if he had any information to contest the amount of the asserted deficiencies, taxpayer responded that he '(thought) that the Court should dismiss it for lack of jurisdiction'".

"The court also upheld the Commissioner's determination of self-employment tax again pointing out that taxpayer 'did not offer any evidence to the contrary'". With regard to the additions to tax, the court upheld the Section 6651(a)(1) addition since '(taxpayers) purported "Fifth Amendment" returns did not constitute returns for purposes of section 6651."

at page 6:

"At the trial of his case, taxpayer presented absolutely no evidence contesting the Commissioner's determination of tax deficiencies and addition to tax and the Tax Court, therefore, sustained the Commissioner's determinations."

Appellant would only point out that any opportunity to present any evidence

and testimony was severely hampered by the appellee and the USTC.

Appellee in addition to the correspondence mentioned supra sought within the requirements of the law at sec. 6103(e) and 6103(b)(1), (b)(2) certain information and documents authorized to be sent to him.

Appellant pursued those documents even though he was given every excuse and though shuttled from area to area, none were ever received. That document is made a part of this Petition to the Court by reference hereby, as if it had been restated in its entirety. This document was made an attachment to Motion to Compel Discovery in the USTC, (Doc. 0011) which was denied.

Appellant would contest counsel for the appellee to present much evidence or testimony in rebuttal under similar circumstances.

Counsel for the appellee claims within appellee's Brief to the Tenth Circuit, page 6, that a notice of deficiency was issued to the appellant.

It is to be noted that the appellant challenged the notice of deficiency in several ways:

(a) whether the respondent had subject matter jurisdiction (See: U.S. v. Holland, 552 F.2d 667 at 671 (VQ) It is presumed that subject matter jurisdiction is lacking until it is shown to exist.);

(b) denied the factual allegations necessary to establish subject matter jurisdiction;

(c) Whether the alleged notice of deficiency had been sent according the requirements of law, including, but not limited to sec. 6213, IRC.

Here the USTC is inconsistent with its own decisions and at variance with determinations of appellate courts in one

or more circuits.

At Heaberlin v. C.I.R., 34 TC 58, 59 the court ruled:

"The Court has no jurisdiction unless a proper notice of deficiency has been mailed in accordance with the provisions of law"

At Vol 11, CCH-Standard Federal Tax Reports at page 65,109, sec 38,549.5226 states:

".5226 Ordinary mail.- Code sec. 6212(a) which provides that the Commissioner is 'authorized' to send the notice by registered mail, does not invalidate a notice duly received which is sent by ordinary mail." (cites omitted)

The decisions of the USTC are clearly at variance with the decision of Lojeski v. Boandl, 788 F.2d 196, 199 (3rd. Cir. 1986) (VQ) where it was held that failure to follow procedures invoked automatic reversal of agency action:

"We recognize that a violation by an agency of its own rules can provide a basis for reversal of the agency action. 'Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise

would be..." (cites omitted).

Appellant also relies upon the decision In U.S. v. Heffner, 420 F.2d 809, (4th Cir. 1970) at page 811, 812, 813. (VQ)

Counsel for the appellee subsequently sent another alleged notice of deficiency by certified mail.

It would appear, on the face of it, that the USTC, chose to assume jurisdiction without regard to the law, decisions of this Court or courts of jurisdiction of the several circuits, or procedural requirements of the IRS, even when those facts were placed squarely before the court by the appellant/petitioner.

Appellant demanded and received from the U.S. Postal Service a ruling that parcels sent with markings of "certified mail" by the respondent were not certified mail as determined within the

law. Such actions are another instance of the blatant disregard by those purporting to act on his behalf of the regulations and laws governing their activities.

CONCLUSION

Appellant is restrained by the number of pages limitations of the rules of the Court from presentment of other numerous points of law to prove and establish his position before the Court.

The restraints of the rules of this Court have also limited the presentment of all issues brought forth in the courts below. This Court deems them waived against the will and over the objection of the appellant.

Appellant has not, does not and shall not waive any issue without full opportunity to make a knowledgeable choice with competent counsel in the presence of the Court. Inadvertence and lack of competence and experience in

pleading his cause before this Court, or any lower court may make it appear that an issue has been waived, but it is a false and mistaken presumption.

The appellant has asked from the onset only one point of law from the appellee to sustain his position: Put the finger of the appellant, and ultimately the finger of the Court upon the law whereby he has been made liable for the tax imposed upon taxable income at sec. 1, IRC, or any other revenue taxable activity found within the IRC.

This Court should require of the Appellee this one presentment and it need go no further nor spend any further time with this appeal.

Should the appellee be able to so do then there is no further contention as to the law. They Win. Appellant loses. Appellant has stated this position before all actors below.

The sum of the petition before this Court argues no other position. Most, if not all, other positions implicitly admit the liability. What is left as virtually untouched are the multiple violations of the rights of the appellant by the appellee.

The lower courts allow this implicit admission and rule against most citizens even though they know, or should know that they are now and have always been without subject matter jurisdiction.

It was Robert Dixon, chief counsel to Congress who asked, by paraphrase, "When does government become culpable for acting upon the ignorance of the people."

Appellant does not pretend nor attempt to argue both sides of the issue before this Court. Appellant is of the position that he should only be required to do so should he be a taxpayer. Prior to the instant that appellant may be determined

to be a taxpayer within the definitions of the law and the IRC the appellee has no position to be argued, nor standing before the Court as to the appellant.

Appellant is not an attorney, nor schooled in law, to attempt to argue both sides would be a great folly.

Appellant argues that no other issue is pertinent until the issue of subject matter jurisdiction, which is the basic premise presented within this appeal, is resolved.

If appellant has been made liable for the tax imposed upon "taxable income" at sec. 1, IRC, or any revenue taxable activity listed at any section of the IRC then it should be found within the law. If it is not within the law then the premise of a lawful tax does not exist.

Appellant contends that the law should be simple and easy to understand. There should be no special logic,

rhetoric or grammar necessary to understand the law, and there is a great wrong perpetrated upon the people should it be considered that only "lawyers" have the ability to know and understand the law.

The Internal Revenue Code is not difficult to understand. It is not complex, cumbersome nor in any manner a deep mystery that may only be resolved by hours of deliberate consideration by only the most informed or some who may have been initiated into some form of mystical inner circle. The Internal Revenue Code is only difficult for the appellee, and counsel for the appellee when they wrest and twist what is clearly stated, to impose a lie and affix a liability upon the appellant.

The questions before the Court are simple affirmations of the law.

This Court should be able to agree 9-0

that the appellant is not liable for any internal revenue tax, especially sec. 1, IRC. Or, in the alternative, this Court should agree 9-0 that the appellant is liable because this Court reveals the law that has been kept hidden from view of the American people. (Cuneo, supra)

Appellant would contend that unless the U. S. Supreme Court is able to agree 100%-completely-as to the liability of the appellant then the law should be void for vagueness.

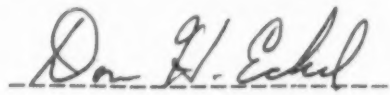
Should the appellant be in error he still contends that he has the right to be shown plainly where such law exists, how he became subject to the law, and whether such attachment was due to deceit, or inadvertence.

Appellant would contend that the least remedy that should be afforded to him by this Court is that the appellee, by Remand, be required to provide full

administrative and procedural due process at the agency level, or such other remedy as appropriate.

Appellant would only ask on the obverse side, should he be correct in his knowledge and belief, that this Court give such redress as is deemed appropriate by this court.

Respectfully submitted,



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APPENDIX

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

DON H. ECKEL,
Petitioner

v. Docket No. 2341-88

COMMISSIONER OF
INTERNAL REVENUE,
Respondent

ORDER

On May 3, 1990, Petitioner's Motion to Revise Computations and Vacate Memorandum Findings of Fact and Opinion was filed. On May 4, 1990, petitioner also filed a Notice of Objection to the Court's and respondent's computations. Upon due consideration, it is

ORDERED that petitioner's Motion To Revise Computations and Vacate Memorandum Findings of Fact and Opinion is denied.

/s/_____
John D. Colvin
Judge

Dated: Washington, D.C.
May 7, 1990

UNITED STATES TAX COURT

DON H. ECKEL,
Petitioner,

v. Docket no. 2341-88

COMMISSIONER OF
INTERNAL REVENUE,
Respondent

DECISION

Pursuant to the opinion of the Court filed April 2, 1990, and incorporating herein the facts recited in the respondent's computation as the findings of the Court, it is

ORDERED and DECIDED: That there are deficiencies in income taxes due from the petitioner for the taxable years 1980, 1981 and 1982 as follows:

Year	Deficiency
1980	$10,515.00
1981	$11,493.28
1982	$ 8,445.00

That there are additions to the tax due from the petitioner for the taxable years 1980, 1981 and 1982 as follows:

Additions to the Tax Under I.R.C. secs.

Year	6651(a)	6653(a)	6653(a)(1)
1980	$2,629.00	$526.00	--
1981	$2,873.00	--	$575.00
1982	$2,111.00	--	$422.00

6653(a)(2)	6654	6661
--	$670.00	--
*	$881.00	--
*	$822.00	$2,111.00

* It is further decided that there are additions to the taxes due from the petitioner for the taxable years 1982 and 1983, under the provisions of I.R.C. sec.6653(a)(2), equal to 50 percent of the statutory interest due on $11,493.28 and 8,445.00, respectively, from April 15, 1982 and April 15, 1983, respectively, to the date of assessment of tax, or, if earlier, the date of payment; and

That a penalty is awarded to the United States under I.R.C. sec. 6673 in

the amount of $3,000.00.

/s/_____
John O. Colvin
Judge

Entered: May 8, 1990

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

DON H. ECKEL,
Petitioner, Appellant

v.

COMMISSIONER OF INTERNAL REVENUE
Respondent, appellee

No. 90-9016
Appeal from U.S. Tax Court
T.C. No. 2341-88

ORDER AND JUDGMENT*

Before McKay, Seymour, and Ebel, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed.

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* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

R. App. P. 34(a); 10 Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Appellant Don H. Eckel appeals an order of the United States Tax Court upholding the Commissioner's determination of Mr. Eckel's deficiencies in income tax and penalties for these deficiencies and awarding damages to the Commissioner for Mr. Eckel's maintenance of a frivolous action/1. The Commissioner argues that the Tax Court correctly upheld the determination of the assessments and requests that Mr. Eckel be sanctioned for bringing the present

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/1. On appeal Mr. Eckel argues that individual tax returns violate the Paperwork Reduction Act of 1980, 44 U.S.C. Secs. 3501-20 (1988). Because this argument was not presented in a timely fashion to the court below, we will not consider it. See Dille v. Council of Energy Resource Tribes, 801 F.2d 373, 376-77 (10th Cir. 1986); Channel v Heckler, 747 F.2d 577, 579 n.2 (10th Cir. 1984).

appeal. We have reviewed the record and relevant law and agree with the Commissioner that the Tax Court's determination of deficiencies and penalties was correct. We also agree with the Tax Court that $3,000 in sanctions was warranted. Thus, for reasons stated in the Tax Court's memorandum of April 2, 1990, we AFFIRM.

Under 28 U.S.C. sec 1912 (1988), this Court may award damages and single or double costs for a frivolous appeal. Stafford v. Commissioner, 805 F.2d 895, 896 (1986); Caspar v Commissioner, 805 F.2d 902, 906 (1986). Rather than remand to the Tax Court for a determination of the actual amount of attorney's fees, we frequently awarded damages of $500 and double costs. ID. Because the average amount of direct costs associated with a defendant a frivolous appeal in 1986 exceeded $1,400, however, in Caspar we

adopted a rule of awarding a flat fee of $1,500 as a sanction for a frivolous appeal from a Tax Court. See 805 F.2d at 906. The record in this case supports imposing a sanction of $1,500 against Mr. Eckel for bringing a frivolous appeal. As we have said before:

> [T]he sanction is easily avoided by litigants advancing claims on appeal which have a factual basis and are warranted by existing law or a good faith argument for the extension, modification or reversal of existing law. Additionally, such claims should not be interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Id. at 907.

Thus, the judgment of the Tax Court is AFFIRMED and judgment under 28 U.S.C. sec. 1912 in the amount of $1,500 is, hereby, awarded to the Commissioner of Internal Revenue. The Mandate shall issue forthwith.

Entered for the Court
Stephanie K. Seymour
Circuit Judge

Dated:
Feb. 7, 1991

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

DON H. ECKEL
Petitioner, appellant

v. No. 90-9016

COMMISSIONER OF
INTERNAL REVENUE
Respondent, appellee.

ORDER

Filed April 12, 1991

Before McKay, Seymour, Ebel, Circuit Judges.

Appellant's motion to reconsider and brief are construed as a petition for rehearing and denied.

Entered for the Court

Robert L. Hoecker, Clerk

/s/_____
By: Patrick Fisher
Chief Deputy Clerk

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Supreme Court Rules, Part III-
Jurisdiction on Writ of Certiorari,
[page 3].

Rule 10.1.

"(a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(c) "When a state court or a United States Court or appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

Constitution for the United States,

Article 1, Sec. 2, Cl. 3, [page 9]
"Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United

States, and within every subsequent Term of ten Years , in such Manner as they shall by law direct."

Article 1, Sec. 7, Cl. 1, [page 9]

"All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills."

Article 1, Sec. 8, Cl. 1, 17, [page 8, 9]

"The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;...

"To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful buildings;-And..."

Article 1, Sec. 9, Cl. 4, [page 9]

"No Capitation, or other direct, Tax shall be laid unless in Proportion to the Census or Enumeration herein before directed to be taken."

Article III, section 1, [page 5]

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Article VI, Clause 3, [page 10]

"The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Offices, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States."

First Declaratory and Restrictive Clause (1st Amendment), [page 5]:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Allgeyer v. Louisiana, 165 U.S. 578, 589, (1897) [page 33]

"The liberty mentioned that that (14th) amendment means, only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood of avocation, and for purpose to enter into all contracts which may be proper, necessary, and essential to carry out to a successful conclusion the purposes above mentioned."

Botta v. Scanlon, 288 F.2d 504, 505 (2nd Circuit, 1961), [page 38]:

"The district court [187 F.Supp. 857] held that the 'ninety day letters' requirement did not apply to assessments under subtitle C of the Code; that section 7421 bars all actions to restrain collection except 'where (a) the tax assessment is an illegal exaction in the guise of a tax and (b) there are present 'special and extraordinary circumstances sufficient to bring the case within some acknowledged head of equity jurisprudence....' (cites omitted)

Botta, page 506

"Moreover, even the collection of taxes should be exacted only from persons upon whom a tax liability is imposed by some statute...."

Botta, page 506

"[5] We recognize, of course, the many cases which hold that a taxpayer against whom an assessment is made must pay the tax and bring an action to recover the

payment. Thus, the amount of the tax, its legality or even constitutionality are not to be tested by injunctive action to restrain collection. Nor do 'special and extraordinary' circumstances embrace financial hardship in making the payment. 'The decided cases dealing with what constitutes irreparable injury are legion in number'...

"However, a REASONABLE CONSTRUCTION OF THE TAXING STATUTES DOES NOT INCLUDE VESTING ANY TAX OFFICIAL with absolute power of assessment against individuals not specified in the statutes as persons liable for the tax without an opportunity for judicial review of this status BEFORE THE APPELLATION OF 'TAXPAYER' is bestowed upon them and their property is seized and sold." (emphasis added)

Botta, page 508

Brushaber v. Union Pacific Railroad Co., 240 U.S. 1, (1916), [page 32]

At page 16:

"Moreover in addition the conclusion reached in the Pollock Case did not in any degree involve holding that income taxes generically and necessarily came within the class of direct taxes on property, but on the contrary recognized the fact that taxation on income was in its nature an excise entitled to be enforced as such unless and until it was concluded that to enforce it would amount to accomplishing the result which the requirement as to apportionment of direct taxation was adopted to prevent, in which case the duty would arise to disregard form and consider substance alone and hence subject the tax to the regulation as to apportionment which otherwise as an

exercise would not apply to it.

At page 18, 19:

"Second, that the contention that the Amendment treats a tax on income as a direct tax although it is relieved from apportionment and is necessarily therefore not subject to the rule of uniformity as such rule only applies to taxes which are not direct, thus destroying the two great classifications which have been recognized and enforced from the beginning, is also wholly without foundation since the command of the Amendment that all income taxes shall not be subject to apportionment by a consideration of the sources from which the taxed income may be derived, forbids the application to such taxes of the rule applied in the Pollock Case by which alone such taxes were removed from the great class of excises, duties and imposts subject to the rule of uniformity and were placed under the other or direct class.

Butchers Union Co., v. Crescent City,
111 U.S. 746, 757 (1883) [page 34]

It has been well said that, 'the property which every man has is his own labor, as it is the original foundation of all property, so it is the most sacred and inviolable. The patrimony of the poor man lies in the strength and dexterity of his own hands, and to hinder his employing this strength and dexterity in what manner he thinks proper, is a plain violation of the most sacred property."

Catholic Conf. v. Abortion Rights Mobilization, _____ U.S. ____, 108 S.Ct 2268, 101 L.Ed.2d 69 (1988), [page 4]

"The challenge in this case goes to the subject matter jurisdiction of the court and hence its power to issue the order. The distinction between subject-matter jurisdiction and waivable defenses is not a mere nicety of legal metaphysics. It rests instead on the central principle of a free society that courts have finite bounds of authority, some of constitutional origin, which exist to protect citizens from the very wrong asserted here, the excessive use of judicial power. The courts, no less than the political branches of the government, must respect the limits of their authority.

Cross v. United States, 512 F.2d 1212, 1217 at (Fourth Circuit, 1975), [page 28]:

"[3-6] The opportunity to engage in food stamp transactions as a retailer is, of course, a privilege and not a right, but, under current law, the dichotomy of treatment between privilege and right has been obliterated. The constitutional guarantee of due process of law applies to both; and we think it applies here, because in a very real sense plaintiff will be deprived of 'property' if he is disqualified from participation in the program for any period of time. Thus, we readily conclude that he may not be deprived of participation in the program on the basis of his alleged wrongdoing, without being afforded procedural due process. Since, as we have shown, FULL

PROCEDURAL DUE PROCESS IS NOT PROVIDED AT THE ADMINISTRATIVE LEVELS where the fact and duration of disqualification are determined...Of course, in the instant case, plaintiff does not contest the fact of violation of the Act and the regulations, but this does not totally oust review. It is the sanction imposed, once a violation of the act or regulations has been found, that constitutes the deprivation of property, not the mere fact of violation, and the Constitution requires that due process be afforded before that deprivation becomes effective". (emphasis added)

Cuneo v. Schlesinger, 484 F.2d 1086, 1091 (D.C. Court of Appeals, 1973), [page 53]:

"13. It is well established that information which either creates or provides a way of determining the extent of substantive rights and liabilities constitutes a form of law that cannot be withheld from the public. (cites omitted)...The FOIA by its explicit terms condemns 'secret law' and requires that it be made public:

(2) Each agency, in accordance with published rules shall make available for public inspection and copying--

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register". (cites omitted)

On page 1091,

"Since the party seeking disclosure does not know the contents of the information sought, he cannot argue as effectively that the documents sought are, for example, 'secret law' to which he is entitled access".

Economy Plumbing & Heating Co., Inc. v. U.S., 470 F.2d 585 at 589 (1972, on appeal for the Court of Claims), [page 4]:

"On the other hand, persons who are not taxpayers are not within the system and can obtain no benefit by following the procedures prescribed for taxpayers, such as the filing of claims for refunds. For example, there have been many cases where parties have sued to enjoin the assessment or collection of their moneys to pay the taxes of another, notwithstanding Section 263 of the Internal Revenue Code of 1939 (26 U.S.C., Sec. 3653 (1952 ed.)) that provided that 'no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court(2)' The courts have allowed these suits because the parties filing the suits were not taxpayers and were outside the revenue system of which the above statute is a part". (cites omitted). In Long v. Rasmussen, the court said:

*** They [the revenue laws] relate to taxpayers, and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law, ***[id. 281 F. at 238]....

"Under the circumstances here recited it is obvious the appellees [whose property had been seized by the IRS to pay the taxes of another] are not taxpayers in the strict sense of the word, and therefore they do not come within the orbit of the income tax laws here invoked....

Economy, at page 589

"3. The term 'taxpayer' in this opinion is used in the strict or narrow sense contemplated by the Internal Revenue Code and means a person who pays, overpays, or is subject to pay his own personal income tax (cites omitted). A 'nontaxpayer' is a person who does not possess the foregoing requisites of a taxpayer."

Economy, Page 590 and footnote 3.

"NEITHER DID THE MERE FILING...MAKE PLAINTIFFS TAXPAYERS WHEN NONE OF THE REQUISITES OF THE STATUS OF TAXPAYERS WERE PRESENT". (emphasis added)

Economy, at page 590.

Flint v. Stone Tracy Co., 220 U.S. 107, (1911), [Page 32]:

"It is therefore well settled by the decisions of this court that...the right to tax a legitimate subject of taxation as an exercise of a franchise or privilege, it is no objection that the measure of taxation is found in income produced in part from property which of itself considered is non-taxable.

"It is contended that the measurement of the tax by the net income of the corporation or company received by it from all sources is not only unequal, but

so arbitrary and baseless as to fall outside of the authority of the taxing power. But is this so? Conceding the power of Congress to tax the business activities of private corporations, including, as in this case, the privilege of carrying on business in a corporate capacity, the tax must be measured by some standard, and none can be chosen which will operate with absolute justice and equality upon all corporations."

Higley v. Commissioner of Internal Revenue, 69 F.2d 160, at 162, 163, (Eight Circuit, 1934), [page 38]:

"In such a situation the beneficiary is entitled to a favorable construction because liability for taxation must clearly appear."

Mason v. Hitchcock, 108 F.2d 134, 135, Peters, District Judge, [page 30]:

...(H)e cannot, however, come into the District Court under the direct authority of the Constitution. Every federal court, other than the Supreme Court derives its jurisdiction wholly from the authority of Congress...

Page 136,

"Jurisdiction over the subject matter in the district court if not conferred by law cannot be created by the parties.

'Consent of the parties can never confer jurisdiction upon a federal court. Any jurisdictional fact prescribed by the statute is absolutely essential, and cannot be waived, and the want of it may be raised at any stage of the

cause.'"(cites omitted)

Stanton v. Baltic Mining Co., 240 U.S. 103, at 112 (1916, on appeal from the District Court for the District of Massachusetts), [page 32]:

"But aside from the obvious error of the proposition intrinsically considered, it manifestly disregards the fact that by previous ruling it was settled that the provisions of the Sixteenth Amendment conferred no new power of taxation but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of indirect taxation to which it inherently belonged and being placed in the category of direct taxation subject to apportionment by a consideration of the sources from which the income was derived, that is by testing the tax not by what it was - a tax on income, but by a mistaken theory deduced from the origin or source of the income taxed."

State v. Striggles, No. 37117, 210 N.W. 137, at 138 the Supreme Court of Iowa, September 28, 1926, Albert, J., [page 30]:

"We are disposed to hold with the O'Neil Case that, when the highest court of jurisdiction passes on any given proposition, all citizens are entitled to

rely upon such decision; but we refuse to hold that the decisions of any court below, inferior to the Supreme Court, are available as a defense under similar circumstances".

Stanard v. Olesen, 74 S.Ct 768, 771, [3-5], 347 U.S.___, (1954), [page 49,50]:

"For if an illicit business can continue while the administrative hearings are under way, those who operate on a fly-by-night basis may be able to stay one jump ahead of the law. Yet it is for Congress, not the courts, to write the law.

Tyler v. U.S., 281 US 497, 502. (3rd & 4th Circuits) (1930) [page 33]:

"A tax laid upon the happening of an event, as distinguished from its tangible fruits, is an indirect tax which Congress, in respect of some events not necessary now to be described more definitely, undoubtedly may impose."

U.S. v. Hatch, 919 F.2d 1394 (9th Circuit, 1990) at page 1395, 1397, 1398, [page 7]:

"On February 28, 1989, Hatch filed a Motion to Dismiss the Information under Fed. R. Crim. P. 12(b)(2) and, in the alternative a Motion to arrest Judgment under Fed.R.Crim.P. 34 and a Motion for Judgment of Acquittal. He alleged that the prosecutor had failed to charge an offense because the government had not complied with the Paperwork Reduction Act of 1980.

[pages 5]:

At page 5732, "[1] In resolving the conflict between article II and article III we look to the language of the Constitution viewed in light of accepted principles of statutory construction, to the history of both articles, and to the Supreme Court decisions interpreting them. Despite long historical practice to the contrary, see infra at slip op. at 5735,-these considerations persuade us that only those judges enjoying article III protections may exercise the judicial power of the United States."

The Congressional Research Service, Zaritsky, 1979, Some Constitutional Questions Regarding the Federal Income Tax Laws, (hereinafter, CRS) [Pages 21, 27, 31]

At page 1, CRS:

"...Since their enactment in 1913, the Federal income tax laws have been the subject of repeated constitutional challenges. In spite of these numerous challenges, however, the income tax has consistently been upheld as a valid exercise of the Federal Government's taxing powers..."

"The Income Tax as an Indirect Excise Tax.

The United States Constitution divides all taxes into two classes; direct and indirect taxes..."

At page 2,

"The status of the income tax has not always been clearly determinable from the

decisions of the United States Supreme Court, though for the past sixty-four years the Court has taken the view that the Federal income tax is an indirect tax authorized under Article 1, Section 8, Clause 1 of the Constitution, as amended by the Sixteenth Amendment to the Constitution..."

At pages 3, 4,

"Some uncertainty followed in the years after Pollack. The Court held repeatedly that various taxes imposed by the Congress were indirect in nature and could be levied without regard to the rule of apportionment." (cites omitted)

"The Sixteenth Amendment to the United States Constitution was ratified in 1913, and...(T)he Congress immediately took advantage of this perceived clarification of its power and enacted another Federal income tax substantially similar to the 1894 tax. 38 Stat. 166. The 1913 tax was imposed on:

'gains, profits, and income derived from...'"

"In 1916, the Supreme Court examined the new income tax in light of the Sixteenth Amendment to the Constitution and the other constitutional provisions discussed above, and found that it was constitutional in its entirety."

On page 5, CRS, Mr. Zaritsky quotes:

"...in a decision written by Chief Justice White, first noted that the Sixteenth Amendment did not authorize any new type of tax, nor did it repeal or revoke the tax clauses of Article 1 of the Constitution, quoted above."

On page 10:

"The United States Constitution does not contain an express prohibition against the denial by the United States Government of a person's equal protection of the laws. The Fifth Amendment to the Constitution does, however, preclude the United States from depriving any person of 'life, liberty, or property without due process of law...' The Supreme Court has determined that this assurance also precludes the United States from denying persons equal protection of the laws." (cites omitted)

26 USC. Sec. 7402. Jurisdiction of District Courts. [Page 30]:

"(a) To issue orders, processes, and judgments.

The district courts of the United States at the instance of the United States shall have such jurisdiction to make and issuein civil actions, writs, and orders of injunction, and of ne exeat republica, orders appointing receivers, and such other orders and processes, and to render such judgements and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws".

Congressional Record-House, Vol. 89, Part 2, 78th Congress, 1st Session, March 27, 1943, pages 2578-2581, [page 31]:

At page 2579, 3rd Column, 1st para;
"In its early stages it was definitely an excise tax or a duty and so construed by the courts."...

"I. THE INCOME TAX IS AN EXCISE TAX, AND INCOME IS MERELY THE BASIS FOR DETERMINING ITS AMOUNT...." and,

On page 2580, center column, 3rd para., speaking of an act of Congress of August 5, 1909 (36 Stat. 11, 112):
"The tax imposed by this act was really an income tax in that it was based on net income, but was given the correct designation of 'excise tax'... The sole test of taxability under this act was whether a corporation was engaged in business."...

"The Supreme Court held that the fact that the tax was measured by net income, and that income from nontaxable property or property not used in business was included in computing net income, did not prevent the tax from being construed as an excise tax which did not require apportionment."...

"The Supreme Court has held that the sixteenth amendment did not extend the taxing power of the United States to new or excepted subjects but merely removed the necessity which might otherwise exist for an apportionment among the States of taxes laid on income whether it be derived from one source or another. So the amendment made it possible to bring

"[1] Hatch argues that the same situation exists here, namely that no offense was charged because 44 U.S.C. sec. 3507(f) was not complied with in making the information request of him. He also points to 44 U.S.C. sec. 3512 which provides that 'no person shall be subject to any penalty for failing to...provide information' if there is no current control number on the request. The Senate Report analysis of sec. 3512 states that

> (i)information collection requests which do not display a current control number or, if not, indicate why not are to be considered 'bootleg' requests and may be ignored by the public.... These are the only circumstances under which a person may justify the failure to maintain information for or provide information to any agency otherwise required, by reliance on this act.

"S.Rep. No. 930, 96th Cong. 2d Sess. 52, reprinted in 1980 U.S.Code Cong. & Admin.News 6241, 6292

"See also 5 C.F.R. Sec. 1320.5(c) ('whenever a member of the public is protected from imposition of a penalty under this section for failure to comply with a collection of information, such penalty may not be imposed by an agency directly, by an agency through judicial process, or by any other person through judicial or administrative process')

"[2] Given the clear language of secs. 3507(f) and 3512, Hatch's argument has merit. Since the Forest Service did not comply with the PRA and since therefore Hatch cannot be subject to any penalty, the information failed to charge an offense. Since failure to charge an offense can be raised 'at any time during

the pendency of the proceedings,' Fed.R.Crim.P. 12(b)(2). Hatch did not raise this defense too late.
REVERSED"

U.S. v. Heffner, 420 F.2d 809, (4th Cir. 1970), [page 58]:

At page 811: "[1] An agency of the government must scrupulously observe rules, regulations, or procedures which it has established. When it fails to do so, its action cannot stand and courts will strike it down. This doctrine was announced in United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260..."

At page 812, "The failure of the Board and of the Department of Justice to follow their own established procedures was held a violation of due process."

At pages 812, 813, "Furthermore, a reversal here would not only have the salutary effect of encouraging IRS agents to observe their own procedures, L. Jaffe, Judicial Control of Administrative Action 369 (1965), cited with approval in Smith v. Resor, 406 F.2d at 146, but would assist the IRS in fulfilling its own important stated purpose in requiring that the warnings be given. For the announcement of the instructions was coupled with the justification that they would insure 'uniformity in protecting the Constitutional rights of all persons.'"

U.S. v. Woodley, 726 F.2d 1328 82-1028, United States Court of Appeals, Ninth Circuit (1983). Synopsis, West Publishing Co., 1983,

investment income within the scope of a general income-tax law, but did not change the character of the tax. It is still fundamentally an excise or duty with respect to the privilege of carrying on any activity or owning any property which produces income. The income tax is, therefore, not a tax on income as such. It is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce. The income is not the subject of the tax; it is the basis for determining the amount of tax." (emphasis added)

(Footnote 4) "If the tax should be construed as a tax on income as a specific fund the disappearance of the fund before the date of assessment would prevent the collection of the tax. (See Foster and Abbot. op. cit., p. 85)"

Cooley's Constitutional Limitations,

Vol. II, page 1034, [Page 34]:

"Taxation is a mode of raising revenue for public purposes. When it is prostituted to objects in no way connected with the public interest or welfare, it ceases to be taxation and becomes plunder, transferring money from the owners of it into the possession of those who have no title to it, though it be done under the name and form of a tax, is unconstitutional for all reasons which forbid the legislature to usurp any other power not granted to them."

An Essay on the Trial By Jury, Lysander Spooner, Boston, John P. Jewett and Company, 1852, Appendix, page 222, Taxation, [page 34]:

"It was a principle of the Common Law, as it is of the law of nature, and of common sense, that no man can be taxed without his personal consent. The Common Law knew nothing of that system, which now prevails in England, of assuming a man's own consent to be taxed because some pretended representative, whom he never authorized to act for him, has taken it upon himself to consent that he may be taxed. That is one of the many frauds on the Common Law, and the English constitution, which have been introduced since Magna Carta. Having finally established itself in England, it has stupidly and servilely copied and submitted to in the United States.

If the trial by jury were reestablished, the Common Law principle of taxation would be reestablished with it; for it is not to be supposed that juries would enforce a tax upon an individual which he had never agreed to pay. Taxation without consent is as plainly robbery, when enforced against one man, as when enforced against millions; and it is not to be imagined that juries could be blind to so self-evident a principle. Taking a man's money without his consent, is also as much robbery, when it is done by millions of men, acting in concert, and calling themselves a government, as when it is done by a single individual, acting on his own responsibility, and calling himself a highwayman. Neither the numbers engaged in the act, nor the different characters they assume as a cover for the

act, alter the nature of the act itself.

If the government can take a man's money without his consent, there is no limit to the additional tyranny it may practise upon him; for, with his money, it can hire soldiers to stand over him, keep him in subjection, plunder him at discretion, and kill him if he resists. And governments always will do this, as they everywhere and always have done it, except where the Common Law principle has been established. It is therefore a first principle, a very sine qua non of political freedom, that a man can be taxed only by his personal consent. And the establishment of this principle, with trial by jury, insures freedom of course; because: 1. No man would pay his money unless he had first contracted for such a government as he was willing to support; and, 2. Unless the government then kept itself with the terms of its contract, juries would not enforce the payment of the tax. Besides, the agreement to be taxed would probably be entered into but for a year at a time. If, in that year, the government proved itself either inefficient or tyrannical, to any serious degree, the contract would not be renewed....."

MT 9900-26 (1-29-75) IR Manual, page 5041.1, section 221, [page 53]:

"Planning and conducting investigations involves the application of knowledge of the criminal and tax laws contained in the Internal Revenue Code (Title 26, United States Code) and the Criminal Code (Title 18, United States Code), together with a working knowledge

of the fundamental rules of evidence. Handbook Subsections 222 and 223 concern general information relative to law and evidence. Specific laws encountered in Intelligence investigations are set forth in Chapter 100. Trial procedure is discussed in Handbook Chapter 600, and the sections of the Handbook concerning particular investigative devices, techniques, and procedures, such as interviewing witnesses and obtaining documentary evidence, include information regarding related rules of evidence."

At 223.5 Presumptions:

"sec. (d) Every person is presumed to know the law and ignorance of the law is no excuse for its violation."

"sec. (e) A person signing an instrument is presumed to have knowledge of its contents".

222.2 Definitions of Crimes

"An act is a crime against the United States only if committed or omitted in violation of a statute forbidding or commanding it, or in violation of a regulation having legislative authority".

U.S. v. Holland, 552 F.2d 667, 671 (1977) [page 56]

"[3-4] It is elementary that, whereas most state trial courts have a general jurisdiction, all federal courts (other than the Supreme Court), trial or otherwise, have a limited jurisdiction. Congress was given authority in the Constitution (Article III, Section 1) to 'ordain and establish' inferior courts. Congress thus has power to fix precisely the jurisdiction of those courts. The presumption is tat a federal curt lacks subject matter jurisdiction until it is shown to exist. (cites omitted)